
UTAH LABOR COMMISSION

EDWIN SELLIS,

Petitioner,

vs.

UNITED PARCEL SERVICE,

Respondent.

**ORDER GRANTING MOTION
FOR REVIEW AND
MODIFYING ALJ'S DECISION**

Case No. 04-0156

Edwin Sellis asks the Utah Labor Commission to review Administrative Law Judge Lima's decision regarding Mr. Sellis's claim for benefits under the Utah Workers' Compensation Act (Title 34A, Chapter 2, Utah Code Annotated) and Utah Occupational Disease Act (Title 34A, Chapter 3, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12, §34A-2-801(3) and §34A-3-102.

BACKGROUND AND ISSUE PRESENTED

Mr. Sellis filed an application for hearing claiming workers' compensation or occupational disease benefits for right knee problems allegedly caused by his work for United Parcel Service. Judge Lima held an evidentiary hearing on Mr. Sellis's claim and then appointed a medical panel to evaluate the medical aspects of the claim. After receiving the panel's report, Judge Lima issued her decision awarding benefits to Mr. Sellis, including temporary total disability compensation from April 28 through May 11, 2003.

Mr. Sellis's motion for review contends that his temporary total disability compensation should commence on March 28, 2003, the date he stopped work as a result of his work-related right knee problems.

DISCUSSION AND CONCLUSION OF LAW

The only dispute in this matter is the duration of Mr. Sellis's temporary total disability compensation. Section 34A-2-410(1)(a) of the Utah Workers' Compensation Act provides that "in case of temporary disability, so long as the disability is total, the employee shall receive (compensation)" This statutory provision is applied in light of two decisions by the Utah Supreme Court. In *Entwistle Co. v. Wilkins*, 626 P.2d 495, 498 (Utah 1981), the Court held that an injured worker's temporary disability "may be found to be total if he can no longer perform the duties of the character required in his occupation prior to his injury." In *Booms v. Rapp*, 720 P. 2d 1363, 1366 (Utah 1986), the Court ruled that "once a claimant reaches medical stabilization, the

ORDER GRANTING MOTION FOR REVIEW / MODIFYING ALJ'S DECISION
EDWIN SELLIS
PAGE 2 OF 2

claimant is moved from temporary to permanent status and he is no longer eligible for temporary benefits.”

Although U.P.S. contends that Mr. Sellis failed to claim temporary total disability compensation for the period prior to April 28, 2003, a review of the hearing record establishes that Mr. Sellis testified his right-knee condition prevented him from working after March 27, 2003. Mr. Sellis's testimony is generally consistent with his application for hearing, where he alleged he had been off work since March 26, 2003. The Commission therefore concludes that Mr. Sellis is entitled to temporary total disability compensation from March 27 until May 11, 2003.

ORDER

The Commission grants Mr. Sellis's motion for review and modifies the first and second paragraphs of Judge Lima's order, found at pages 7 and 8 of her decision of September 14, 2006, as follows:

U.P.S. and Liberty Mutual shall pay Mr. Sellis temporary total disability compensation at the weekly rate of \$493 from March 27, 2003, through May 11, 2003, for six weeks and three days, for a total of \$3,193.50. This amount is now accrued and, therefore, due and payable in a lump sum, together with interest thereon at 8% per annum.

It is further ordered that U.P.S. and Liberty Mutual shall pay attorney's fees of \$638.70 plus 20% of the interest awarded herein to Phillip Shell, Esq., as provided by the Labor Commission's Rule R602-2-4. U.P.S. and Liberty Mutual shall deduct this amount from Mr. Sellis's award and send it directly to Mr. Shell.

The remainder of Judge Lima's order remains in effect.

It is so ordered.

Dated this 20th day of March, 2007.

Sherrie Hayashi
Utah Labor Commissioner